

Order

Entered: January 22, 2003

2002-13

Proposed Amendment of Rule 3.210
of the Michigan Court Rules

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.210 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before final adoption or rejection. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language of MCR 3.210 would be amended as indicated below.]

Rule 3.210 Hearings and Trials

(A) - (B) [Unchanged.]

(C) Custody of a Minor.

(1) - (4) [Unchanged.]

(5) The court may interview the child privately to determine if the child is of sufficient age to express a preference regarding custody, and if so, the reasonable preference of the child. The court shall focus the interview on these determinations, and the information received shall be applied only to the reasonable preference factor. The interview may be recorded, in the discretion of the court, but a transcript shall not be prepared unless there is an appeal, in which event the transcript shall be sealed.

(5) - (7) [Renumbered (6) - (8), but otherwise unchanged.]

(D) [Unchanged.]

Staff Comment: In its order of partial affirmance and remand in *Molloy v Molloy*, 247 Mich App 348 (2001), 466 Mich 852 (No. 1, 2002), the Supreme Court announced that it was opening an administrative file to examine the extent to which, and the procedures by which, testimony may be taken in custody cases. Under the rule now proposed, the interview would be limited to a child's custodial preference, with the court having discretion to record the interview.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by May 1, 2003: Clerk's Office, Michigan Supreme Court, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-13. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.